

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:13-CV-00649-FL

**Amy Sparks, individually, and Robert D.
Sparks, as Personal Representative of the
Estate of Jarred B. Sparks,**

Plaintiffs,

vs.

**Oxy-Health, LLC and Oxy-Health
Corporation,**

Defendants.

**WRONGFUL DEATH /
SURVIVAL ACTION**

MOTION FOR ENTRY OF DEFAULT

Plaintiffs, by and through undersigned counsel and pursuant to Rule 55(a) of the Federal Rules of Civil Procedure, move this Honorable Court for an entry of default based on the pleadings filed in this case, this Motion, and the Affidavit of Default [ECF No. 11]. The basis for Plaintiffs' request for the entry of default is that Defendants Oxy-Health, LLC and Oxy-Health Corporation have failed to appear and plead or otherwise defend the Plaintiffs' allegations found in the Complaint filed with this Court. Defendants waived service of a summons in this matter and, in the executed "Waiver of the Service of Summons" forms, acknowledged that a default judgment would be entered against Defendants if an answer or motion under Rule 12 was not filed and served by November 12, 2013. To date, the Defendants have failed to file an answer, notice of appearance, motion, or other pleading in this matter. As such, Defendants are now, and have been, in default.

In the Complaint, Plaintiffs requested an amount of unliquidated damages based on the injuries sustained as a result of the claims alleged in this matter. Therefore, upon entry of default,

Plaintiffs, by and through their undersigned counsel, request that a jury determine the amount of damages at the next appropriate time and manner.

Notably, the instant matter was filed in this Honorable Court after Defendants argued in the Superior Court for the State of California for the County of Los Angeles that North Carolina was a more convenient forum than California for Defendants to defend the allegations against them. Given this argument and the fact that Defendants received a nearly identical Complaint in the California action on May 31, 2013, Defendants' failure to file an answer or otherwise defend is completely inexcusable and without good cause.

Respectfully submitted this **14th** day of November, 2013,

MOTLEY RICE LLC

By: /s/ W. Christopher Swett
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CERTIFICATE OF SERVICE

I, Lisa Ranaldo, a paralegal with the law firm of Motley Rice LLC, do hereby certify that I have this 14th day of November 2013 served a copy of the Motion for Entry of Default and Proposed Order on the individuals below by placing a copy of same in the United States Mail, postage prepaid and return address clearly indicated to the following address:

Parties Served:

VIA CERTIFIED MAIL - RRR

Mr. Wei C. Wong
Oxy-Health Corporation
716 S. Garfield Avenue
Alhambra, California 91801

VIA CERTIFIED MAIL - RRR

Mr. Hemant Desai
Oxy-Health, LLC
160 E. Arrow Highway
San Dimas, California 91773

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s/ Lisa Ranaldo

Lisa Ranaldo